



Report to the Auburn City Council

Action Item

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Agenda Item No.

City Manager's Approval

To: Honorable Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works
Date: April 14, 2014
Subject: Assignment/Assumption, with consent, of an Auburn Municipal Airport Ground Lease (Hangar 76) from four individuals to Neil and Patricia Munro, a married couple.

The Issue

Shall the City Council consent to the assignment and assumption of an existing ground hangar lease, previously assigned and held by four individuals, William Kirby, Rosemarie Kirby, Stewart P. Wells and Mary Ann Wells (as "Assignors") to Neil and Patricia Munro (as "Assignees").

Conclusions and Recommendations

By **RESOLUTION**, authorize the City Manager or his designee to approve the assignment and assumption of the lease of certain premises commonly known as "Hangar 76", which is a portion of APN 052-010-028, at the Auburn Municipal Airport, between the City of Auburn and William Kirby, Rosemarie Kirby, Stewart P. Wells and Mary Ann Wells to Neil and Patricia Munro and further authorize the execution of all related documents.

Background

On February 1, 2001, the City of Auburn, as Lessor, entered into a lease with William and Rosemarie Kirby, as Tenants, for the lease of premises commonly known as Hangar 76. The lease was amended on or about April 15, 2004 to add Stewart P. and Mary Ann Wells.

Subsequently, through various informal arrangements, Dennis R. Freidig was given certain rights in the premises. The City has prepared a "General Release" document, for the current "Assignors" to execute, including Dennis R. Freidig, to include, in part, Dennis R. Freidig's consent to this assignment and assumption.

Analysis

As a means to facilitate the assignment of the lease, the previously identified "Assignors" have requested the City's consent to assign the Hangar 76 leasehold interest to Neil and Patricia Munro. Staff recommends the City consent to the assignment/assumption and the execution of any related documents, including the recording, by the Placer County Recorder's Office, of a memorandum of lease for the affected parcel, if necessary, following execution of the previously mentioned "General Release" document.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment/assumption of the land lease between the City of Auburn and William Kirby, Rosemarie Kirby, Stewart P. Wells and Mary Ann Wells to Neil and Patricia Munro and further authorize the execution of all related documents.
2. Do not adopt a resolution and direct staff accordingly.

Fiscal Impact

None. The current monthly lease amount will be assumed by the "assignee" to the lease.

Attachments – Assignments of Lease with Consent

General Release

Resolution

GENERAL RELEASE

This General Release ("Release") is made by William W. Kirby, Rosemarie Kirby, Stewart P. Wells, Mary Ann Wells and Dennis R. Freidig (together, the "Releasors") in favor of the City of Auburn, a municipal corporation ("City"), as of February 5th, 2014.

RECITALS

- A. William W. Kirby and Rosemarie Kirby, as "Tenant" and City entered into that certain Auburn Municipal Airport Land Lease dated as of February 1, 2001 (the "2001 Lease").
- B. The 2001 Lease was amended on or about April 15, 2004 to add Stewart P. Wells and Mary Ann Wells as "Tenant" (as amended, the "Lease"). Capitalized terms when used herein shall have the meanings ascribed to them in the Lease unless expressly defined otherwise herein.
- C. Through various informal arrangements, Dennis R. Freidig was given certain rights in the Premises.
- D. Currently herewith, William W. Kirby, Rosemarie Kirby, Stewart P. Wells, Mary Ann Wells are assigning all of their right, title and interest in the Lease, with Dennis R. Freidig's consent, to Neil and Patricia Munro.
- E. City is willing to consent to such assignment provided the Releasors execute and deliver to City this General Release.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants contained herein, the Releasors agree as follows:

1. In consideration of the above, Releasors do hereby release and forever discharge City, and its officers, employees, council members, agents and attorneys, their predecessors, successors and assigns from any and all claims, demands, causes of actions, suits, damages, judgments or obligations of whatsoever nature, kind or character, whether at law or in equity, whether existing or arising under the laws of the State of California, United States of America or any other state or political subdivision, whether now known or unknown, suspected or unsuspected, matured or unmatured, whether having arisen or

hereafter to arise, which Releasors or any of them may now or hereafter have against any of such parties based upon or arising out of in any manner, directly or indirectly, the 2001 Lease, the Lease, the assignment of the Lease and any purported assignment of the Lease.

Except as hereinabove limited, it is understood and agreed by Releasors that the claims released hereunder include all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, arising out of or related to any and all of the matters referred to in the immediately preceding paragraph, notwithstanding the provisions of Section 1542 of the California Civil Code, which Section provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Releasors acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the claims released hereunder, and agree that this Release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof, and waive application of the provisions of Section 1542 with respect to the claims released hereunder.

3. Each Releasor hereby represents to each other and to the City that:
 - a. He or she has the right, power and authority to enter into this Release.
 - b. He or she has not assigned in part or all of any claim or cause of action within the scope of the release granted above.
 - c. No consent of any governmental or quasi-governmental authority, which consent has not heretofore been obtained, is necessary for the effectiveness of this Release on the part of the parties in accordance with its terms.
 - d. Each Releasor has read the contents of this Release and understands its contents completely, and have had the opportunity to consult with an attorney and that they are executing this Release with full and complete authority in and of their own free wills, acts and deeds.

5. The parties acknowledge that this Release is being entered into in compromise and settlement of potential claims and to avoid further trouble, expense and litigation. Nothing herein shall be admissible in any proceeding as an admission of any factual matter against any party.

6. This Release contains the complete and integrated agreement of the parties with respect to the subject matter hereof. No parties have relied upon any representations of any other parties hereto other than as expressly stated herein.

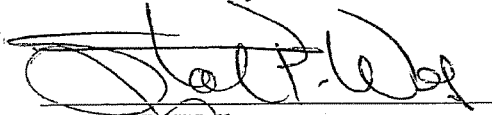
7. It is understood and agreed that this Release shall be binding upon and shall inure to the benefit of each respective party hereto and their respective representatives, successors and assigns.

8. This Release may be executed in several counterparts and each such counterpart shall be effective as an original.

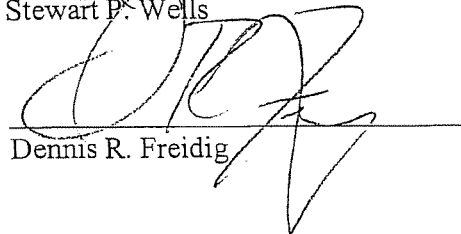
IN WITNESS WHEREOF, the parties have executed this Release on the 5th day of February, 2014.



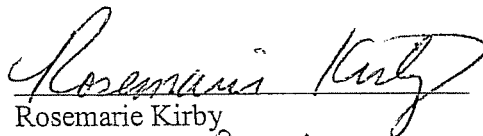
William W. Kirby



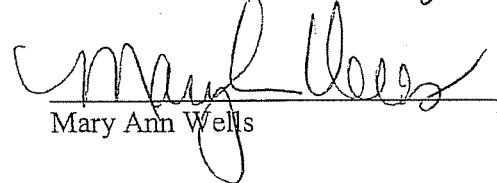
Stewart P. Wells



Dennis R. Freidig



Rosemarie Kirby



Mary Ann Wells

RECORDING REQUESTED BY

PLACER TITLE COMPANY

WHEN RECORDED MAIL TO:
NEIL AND PATRICIA MUNRO

Order Number: 102-40330-DY

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

**ASSIGNMENT OF LEASE WITH CONSENT
(AUBURN MUNICIPAL AIRPORT LAND LEASE)
(HANGER 76)**

ASSIGNMENT OF LEASE WITH CONSENT
(AUBURN MUNICIPAL AIRPORT LAND LEASE)
(Hangar 76)

This Assignment of Lease with Consent ("**Assignment**") dated as of February _____, 2014 (the "**Effective Date**") is made and entered into for good and valuable consideration by and between William W. Kirby, Rosemarie Kirby, Stewart P. Wells and Mary Ann Wells (together, "**Assignor**"), on the one hand, and Neil Munro and Patricia Munro (together "**Assignee**"), on the other, with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as City, and William W. Kirby and Rosemarie Kirby, as Tenant, executed that certain Auburn Municipal Airport Land Lease on February 1, 2001, for the lease of certain premises commonly known as "Hangar 76" and which is a portion of Assessor Parcel Number 052-010-028 in Auburn, California, which Lease was amended on or about April 15, 2004 by that certain Amendment No. 1 to Lease (as amended, the "**Lease**") to add Stewart P. Wells and Mary Ann Wells as "Tenant."

B. Assignor now desires to assign the Lease to Assignee, and Assignee desires to accept the Assignment thereof.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.
2. Assignment, Assumption and Consent - Lease. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon.
3. Consent of City. The City hereby consents to the Assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.
4. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" under the Lease, occurring on and after the Effective Date.
5. Entire Agreement. This Assignment, together with the Lease, is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be

deemed a waiver of any other or subsequent breach.

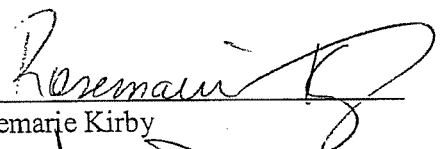
6. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.


7. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

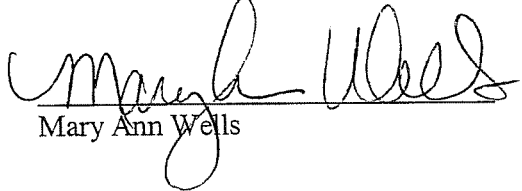
8. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.

ASSIGNOR:


William W. Kirby

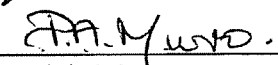

Rosemarie Kirby


Stewart P. Wells


Mary Ann Wells

ASSIGNEE:


Neil Munro


Patricia Munro

(signatures continue)

CITY:

THE CITY OF AUBURN,
a municipal corporation

By: _____

Name: _____

Its: _____

Attest:

Amy M. Lind
Deputy City Clerk

Approved as to form:

Michael G. Colantuono
City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

A LEASEHOLD INTEREST IN THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF PLACER, CITY OF AUBURN, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE TRACT DESCRIBED IN THE GRANT DEED TO THE CITY OF AUBURN, RECORDED IN VOLUME 496 AT PAGE 279, OFFICIAL RECORDS OF PLACER COUNTY AS SHOWN ON RECORD OF SURVEY NO. 1847, FILED IN BOOK 14 OF SURVEYS AT PAGE 66, PLACER COUNTY RECORDS, LOCATED IN SECTION 28, TOWNSHIP 13 NORTH, RANGE 8 EAST, M.D.M., CITY OF AUBURN, PLACER COUNTY, CALIFORNIA.

BEGINNING AT THE SOUTHWEST CORNER OF THE PARCEL TO BE DESCRIBED HEREBY, AND FROM SAID POINT A THREE QUARTER INCH DIAMETER IRON PIPE STAMPED "L.S. 4751" MARKING THE SOUTHEAST CORNER OF THE PROPERTY SHOWN AND DESIGNATED AS "T HANGARS/COLE #95-18" ON THE ABOVE DESCRIBED RECORD OF SURVEY BEARS THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) SOUTH 83° 54' 23" WEST, FOR A DISTANCE OF 5.00 FEET TO A POINT ON THE EASTERLY LINE OF ABOVE DESCRIBED "T HANGARS/COLE" TRACT OF LAND AND (2) SOUTH 06° 54' 04" EAST ALONG SAID EASTERLY LINE FOR A DISTANCE OF 91.20 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 83° 54' 23" EAST, FOR A DISTANCE OF 52.50 FEET; THENCE NORTH 06° 05' 37" WEST, FOR A DISTANCE OF 45.00 FEET; THENCE SOUTH 83° 54' 23" WEST, FOR A DISTANCE OF 52.50 FEET; THENCE SOUTH 06° 05' 37" EAST, FOR A DISTANCE OF 45.00 FEET TO THE POINT OF BEGINNING.

APN: A PORTION OF 052-010-028 (ASSESSMENT NO. 860-000-515-000)

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RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN
APPROVING THE ASSIGNMENT AND ASSUMPTION AND AMENDMENT OF THE
SUBJECT LAND LEASE FOR THE HANGAR 76

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn hereby authorizes the City Manager or his designee to approve the assignment and assumption of the lease of certain premises commonly known as "Hangar 76", which is a portion of APN 052-010-028, at the Auburn Municipal Airport, between the City of Auburn and William Kirby, Rosemarie Kirby, Stewart P. Wells and Mary Ann Wells to Neil and Patricia Munro and further authorize the execution of all related documents.

DATED: April 14, 2014

Bridget Powers, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 14th day of April, 2014 by the following vote on roll call:

Ayes:
Noes:
Absent:

Stephanie L. Snyder, City Clerk

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